IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1062 OF 2002

Maruti Dattu Dakare ..Appellant

versus

Ravalu Krishna Patil ..Respondent

Mr. S. Redekar for the Appellant.

Mr. M. C. Shah i/b. R.R. Sharma for the Respondent.

CORAM : D. G. DESHPANDE,J.

DATE : 2ND FEBRUARY,2005

ORAL ORDER :

1. Heard counsel for the Appellant and the Respondent.

2. Appellant is the original plaintiff. He had filed a summary suit against the respondent for recovering Rs.40,000/- on the basis of the promissory note. Before filing the suit he had given registered notice to the defendant. Two notices were sent one by post on 17.1.2000 at his residence and other to his office. According to the plaintiff the defendant received one notice sent at

his residence and the other envelope was returned unserved, on that basis the suit was filed.

3. The defendant opposed the suit contending that the promissory notice was forged and fabricated and did not bear his signature. While the suit was pending the matter was referred to the hand writing exert at the instance of the plaintiff - appellant. Certain more specimen signature of the defendant were obtained by the court and were given to the Hand Writing Expert. However, handwriting expert gave his opinion and contended that though there were some similar writing characteristics between the disputed document and the admitted document, they were not sufficient to enable him to give him any definite opinion. On this ground, the suit came to be dismissed.

4. Counsel for the appellant - plaintiff contended that comparison of the signature of the defendant on the vakalatnama and promissory note and the acknowledgment would show that they are identical signatures. Now since handwriting expert has given his opinion, it would not be proper on my part, at this stage, to compare those signatures. The court can do it under the provisions of the Evidence Act, however, this appears to be a case where more admitted signatures of the defendant

could be send to the handwriting expert, and for which the matter will have to be remanded. Therefore, order:

ORDER

. Appeal is allowed. Impugned order of dismissal of the suit is set aside. The suit matter is remanded to the court, again for deciding it in accordance with the law. The court will call for the attendance register, muster roll and the salary register all pertaining to the defendant say for a period of 12 months in continuation and those signatures will be referred to the hand writing expert, again for comparison and his opinion. The expenses will be borne by the plaintiff. Parties to appear before the City Civil Court along with the authenticated copy of this order on 21.2.2005 and the City Civil Court will refer the matter to the hand writing expert within a period of six weeks from the date of first appearance of the parties, and will decide the matter within three months of receipt of hand writing expert’s opinion. No order as to costs.

. All concerned parties to act on an ordinary copy of this order duly authenticated by the Court Sheristedar.

2.2.2005 (D.G. DESHPANDE,J.)